

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No. : 7,516,692
Issued : April 14, 2009
Appln. No. : 10/781174 Confirmation No.: 1807
Applicant : Pirkle, Fred et al.
Filed : 02/18/2004
TC/A.U. : 1794
Examiner : D. Becker
Customer No. : 00270
Title : METHOD AND APPARATUS FOR SLOW COOKING

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR DEFERRAL OF RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 CFR §1.705(b)

Dear Sir:

Applicants respectfully request that consideration of, and a decision regarding, their Application for Patent Term Adjustment be held in abeyance, pending a final, non-appealable, decision on the merits in Wyeth v. Dudas, 07-CV-1492 (D.D.C), on appeal, 2009-1120 (Fed. Cir.)("Wyeth v. Dudas").

1, Applicants filed a Request for Reconsideration of Patent Term Adjustment under 37 CFR §1.705(b) on January 2, 2009.

2. On March 13, 2009, the Office of Petitions issued an order holding the Applicants' request in abeyance because the patent had not yet issued.

3. The Applicant's patent issued on April 14, 2009, and on April 22, 2009 the Applicants filed a renewed request for reconsideration of the patent term adjustment.

4. Wyeth and Elan Pharma International Limited filed a civil action in the United States District Court in and for the District of Columbia against Jon W. Dudas, as Under

Secretary of Commerce for Intellectual Property and Director of the USPTO (07-CV-1492 (D.D.C.)). This case is on appeal to the United States Court of Appeals for the Federal Circuit (Wyeth v. Dudas, 2009-1120).

5. Wyeth v. Dudas relates to the interpretation of 35 USC §154, and in particular, the interrelation of 35 USC §§154(b)(1)(A) and (b)(1)(B).

6. Applicants' Application for Patent Term Adjustment is based on an interpretation of 35 USC §154, which is the subject of Wyeth v. Dudas. *See* Statement under 37 CFR §1.705(b)(2), filed April 22, 2009, at paragraph 3(D).

7. A proper determination regarding Applicants' Application including Request cannot be made, given that a final non-appealable decision on the merits in Wyeth v. Dudas will have collateral estoppel effect on the USPTO.

In view of the above, Applicants respectfully request that consideration of, and a decision regarding, their Request for Reconsideration under 37 CFR §1.705(b) be deferred until a final non-appealable decision on the merits in Wyeth v. Dudas.

Dated: July 7, 2009

Respectfully submitted,

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